

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LOUIS SOCK, III,

Defendant-Appellant.

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UNPUBLISHED

September 18, 2003

No. 238455

Wayne Circuit Court

LC No. 01-000916-01

Before: O’Connell, P.J. and Jansen and Fort Hood, JJ.

PER CURIAM.

Defendant appeals by right from a jury conviction of second-degree murder, MCL 750.317, and dismemberment of a dead body, MCL 750.160, for which he was sentenced as a fourth habitual offender, MCL 769.12, to 50 to 75 years’ imprisonment. We affirm.

Defendant first alleges ineffective assistance of counsel, either because the lower court abused its discretion in failing to grant defense counsel enough time to prepare, or because defense counsel did not allot himself sufficient time to prepare. Because there has been no evidentiary hearing in the trial court regarding ineffective assistance of counsel, our review is limited to what is apparent from the record. *People v Rodriguez*, 251 Mich App 10, 38; 650 NW2d 96 (2002). Our Supreme Court recently made it clear that “a trial court’s decision whether to grant a continuance is reviewed for an abuse of discretion” under the *Spalding* standard. *People v Jackson*, 467 Mich 272, 276-277; 650 NW2d 665 (2002), citing *Spalding v Spalding*, 355 Mich 382, 384; 94 NW2d 810 (1959), under which abuse of discretion involves a result “so palpably and grossly violative of fact and logic that it evidences not the exercise of will but perversity of will, not the exercise of judgment but defiance thereof, not the exercise of reason but rather of passion or bias.” *Spalding, supra* at 384-385. Ineffective assistance of counsel requires defendant to “overcome a strong presumption that counsel’s performance constituted sound trial strategy” and requires the defendant to show prejudice. *People v Carbin*, 463 Mich 590, 600; 623 NW2d 884 (2001).

The lower court concluded that defense counsel was not lacking any discoverable materials or that defense counsel was unprepared for trial, despite defense counsel’s protestations to the contrary. Defendant has not shown anything to indicate that the lower court abused its discretion when it declined to grant defense counsel any continuances. Defendant does provide a number of alleged errors made by defense counsel that defendant suggests would not have been made had defense counsel been prepared, but any prejudice defendant might have suffered as a

result is speculative. Moreover, several errors are based on exhibits not properly before this Court because they were not filed with the lower court. Even considering those exhibits in light of defendant's request to remand for an evidentiary hearing, *People v Ginther*, 390 Mich 436, 443-444; 212 NW2d 922 (1973), any prejudice is *still* speculative. Therefore, defendant fails to show that the lower court abused its discretion, that defendant's trial counsel was ineffective on the record, or that defendant is entitled to a remand.

Defendant next alleges that the prosecutor committed error requiring reversal by failing to turn over to the defense certain required evidence and by eliciting opinion testimony from the case investigator regarding defendant's guilt. A trial court's decisions regarding discovery requests are reviewed for an abuse of discretion. *People v Fink*, 456 Mich 449, 458; 574 NW2d 28 (1998). However, this Court "generally review[s] de novo allegations of prosecutorial misconduct." *People v Pfaffle*, 246 Mich App 282, 288; 632 NW2d 162 (2001). The prosecution is required by due process to turn over any evidence that is favorable to the defendant or that raises a reasonable doubt about the defendant's guilt. *People v Stanaway*, 446 Mich 643, 666; 521 NW2d 557 (1994). However, "[c]riminal defendants do not have general rights to discovery." *Stanaway*, *supra* at 680. Discovery in criminal cases is left to the discretion of the trial court. *Id.* Moreover, discovery should not be granted when the record indicates that the request is simply a "fishing expedition." *Id.*, quoting *People v Maranian*, 359 Mich 361, 368; 102 NW2d 568 (1960).

The trial court here was faced with an accusation by defense counsel that the prosecutor had not turned over evidence and an assertion by the prosecutor that she had turned over everything she had to defense counsel. Defendant has not shown any more than speculation that these materials, if they existed, might have made a difference to the outcome of the trial or that there might have been any bad faith on the part of the police.

Regarding the opinion testimony of the case investigator, the question is whether, considering the situation in context, *People v Noble*, 238 Mich App 647, 660; 608 NW2d 123 (1999), defendant was denied a fair and impartial trial. *People v McElhaney*, 215 Mich App 269, 283; 545 NW2d 18 (1996). In context, defendant has not shown this. Therefore, defendant has not shown that the trial court abused its discretion, that there was either a discovery or a due process violation, that the prosecutor committed misconduct, or that defendant was denied a fair and impartial trial.

Finally, defendant alleges that his constitutional rights were denied him because the lower court prohibited certain cross-examination by defense counsel. Although "limitation on cross-examination preventing a defendant from placing before the jury facts from which bias, prejudice, or lack of credibility of a prosecution witness might be inferred constitutes denial of the constitutional right of confrontation," *People v Cunningham*, 215 Mich App 652, 657; 546 NW2d 715 (1996), "neither the Sixth Amendment Confrontation Clause, nor due process, confers on a defendant an unlimited right to admit all relevant evidence or cross-examine on any subject." *People v Hackett*, 421 Mich 338, 347; 365 NW2d 120 (1984). Limitations on cross-examination are reviewed for an abuse of discretion. *People v Cash*, 419 Mich 230, 247; 351 NW2d 822 (1984).

Defendant has not explained how any of the precluded cross-examination would have allowed defendant to test the "bias, prejudice, or lack of credibility" of witnesses or evidence.

*Cunningham, supra* at 657. Instead, defendant appears to have been attempting to introduce rebuttal evidence, not impeachment evidence. “Admission of rebuttal evidence is within the sound discretion of the trial judge and will not be disturbed absent a clear abuse of discretion.” *People v Figgures*, 451 Mich 390, 398; 547 NW2d 673 (1996). Even taking into account defendant’s constitutional rights, defendant has not shown anything suggesting that the lower court abused its discretion in limiting cross-examination.

Affirmed.

/s/ Peter D. O’Connell  
/s/ Kathleen Jansen  
/s/ Karen M. Fort Hood